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November 30, 2016

**SUBMITTED ELECTRONICALLY VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, NW  
Washington, DC 20554

Re: ***Ex Parte* Presentation**

**WT Docket No. 16-319, *Bresnan Communications, LLC, Request for Waiver***

Dear Ms. Dortch:

On November 16, 2016, the Rural Wireless Association (“RWA”) submitted an *ex parte* letter<sup>1</sup> that simply re-states the arguments made in its Comments in this proceeding.<sup>2</sup> As in those Comments, RWA’s *ex parte* submission does not dispute that grant of the requested waiver<sup>3</sup> would quickly bring increased competition and enhanced coverage to consumers in the areas covered by the affected licenses, many of which are rural and underserved and include tribal lands, and would deliver new retail facilities and jobs. At the same time, RWA provides no real alternative for realizing any of these significant benefits. Further, T-Mobile provides additional commitments below that strengthen its commitment to rapidly build-out the spectrum and provide competitive service to the state of Montana. The Commission should expeditiously

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<sup>1</sup> Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 16, 2016) (“RWA *ex parte* Letter”).

<sup>2</sup> See Comments of the Rural Wireless Association Opposing Requested Waiver, WT Docket No. 16-319 (filed Oct. 26, 2016) (“RWA Comments”).

<sup>3</sup> On September 30, 2016, Bresnan, a wholly owned subsidiary of Charter Communications, Inc. and the current licensee, applied on behalf of itself and T-Mobile for a waiver of section 27.14(g)(1) of the rules (the “Acceleration Rule”) for stations WQJQ805, WQJQ806, and WQJQ807 (the “Licenses”). See Public Notice, Wireless Telecommunications Bureau Seeks Comment on Request for Waiver of Accelerated Final Construction Deadline for Three 700 MHz Licenses in Montana, WT Docket No. 16-319, DA 16-1152 (rel. Oct. 6, 2016); see also Bresnan Communications, LLC Request for Waiver (appended as Attachment A to Form 601 in each of File Nos. 0007477181, 0007477183, and 0007477186) (filed Oct. 5, 2016) (“Waiver Request”). Bresnan and T-Mobile have sought Commission consent to the assignment of the Licenses. See Bresnan Communications, LLC Assignment Application, ULS File No. 0007470149 (filed Sept. 27, 2016) (“Assignment Application”).

grant the requested waiver and assignment of licenses so that the citizens of Montana can benefit from new services and competition as quickly as possible.

*The Public Interest Continues to Support Grant of the Waiver Request.* RWA's *ex parte* demonstrates that its claims continue to be speculative. It re-states that "it has members who will apply for spectrum reclaimed by the Commission,"<sup>4</sup> but it still does not identify those members. Nor have any such members identified themselves at any time in the pleading cycle. And, even assuming that such members exist, it would be years before they could be issued authorizations to serve any of the licensed areas—even the cherry-picked, gerrymandered portions of those areas that RWA concedes are the most likely to be attractive to its unnamed members.<sup>5</sup> RWA ignores T-Mobile's demonstration of the lengthy period between recapture of spectrum and re-license of that same spectrum.<sup>6</sup>

In contrast, T-Mobile has made substantive commitments to build out—quickly.<sup>7</sup> Assuming prompt Commission action, T-Mobile will provide the level of service required to satisfy the end-of-license term performance obligations under Section 27.14(g) of the rules earlier than the rules currently require. T-Mobile has already begun the process of designing its network and identifying suppliers and partners to build the license areas and has provided the Commission

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<sup>4</sup> RWA *ex parte* Letter at 2.

<sup>5</sup> RWA Comments at 5, n.11.

<sup>6</sup> RWA argues that its proposal to re-auction the spectrum will generate revenues, which is in the public interest. However, that is precisely the type of consideration the Commission is *prohibited* from making under the Communications Act and which would significantly delay service to the public. See 47 U.S.C. 309(j)(7).

<sup>7</sup> All of the other parties submitting comments in this proceeding recognize that the public interest would be served by grant of the Waiver Request and the Assignment Application. See Letter from Steve Daines and Jon Tester, Senators for Montana, United States Senate to Tom Wheeler, Chairman, FCC (Oct. 6, 2016) ("We urge you to grant the license transfers and extension as quickly as possible and thereby allow T-Mobile to deploy the spectrum and provide advanced services to rural consumers who need them the most."); Letter from Steve Bullock, Governor, State of Montana to Tom Wheeler, Chairman, FCC, WT Docket No. 16-319 (filed Nov. 3, 2016) ("We implore you to grant these requests as expeditiously as possible."); Letter from Doug Kary, Senator for Senate District 22, Montana State Senate to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 5, 2016) ("It is my hope that the Commission will promptly grant the relief critical to the citizens of this great state of Montana"); Letter from Daniel Zolnikov, Representative for Billings, Montana House of Representatives to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 3, 2016) ("Allowing T-Mobile that extra time, and waiving the accelerated construction deadline, will permit the company to bring its innovative services to my constituents."); Letter from Angie Kronenberg, Chief Advocate & General Counsel, INCOMPAS to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 7, 2016) ("The public interest will be best served by granting the waiver request so that T-Mobile can become the licensee of this spectrum with sufficient time to build out and provide a new competitive alternative to consumers."). While the letter from Senators Tester and Daines inadvertently referred to T-Mobile building out 40% of the areas covered by the licenses within six months of Commission action, T-Mobile's later communications with the Senators' staff confirmed that the Senators understand the commitment to be those noted below and that they continue to strongly support grant of the Waiver Request and Assignment Applications.

with a map of its proposed sites. It has also committed to establishing retail sites in the licensed areas.

RWA argues that the Acceleration Rule is primarily intended to prevent spectrum warehousing.<sup>8</sup> But the underlying reason that the Commission guards against warehousing is to ensure that spectrum is put to use so that the public can be served. There can be little doubt that the public interest and Montana consumers will be better served by the certainty that T-Mobile offers rather than the mere potential that—at some uncertain point—un-identified RWA members will provide service.<sup>9</sup> RWA instead asks that the Commission turn its public interest analysis on its head by rejecting the rapid, guaranteed delivery of new competitive services to rural and tribal areas of Montana and Wyoming in favor of preserving an option for RWA's members to obtain slivers of cheap spectrum at some later date—but only if they decide that they wish to bid on that spectrum when the time comes.

*The Requested Relief is Consistent with Precedent.* RWA complains that Bresnan has not publicly disclosed the steps that it has taken to build out. It misses the point. As T-Mobile demonstrated, it has taken measures that will allow it to comply with the aggressive timetable to which it has agreed. In the *Pacific Communications* decision that RWA once challenged, but now embraces, it was the assignee's acts to which the Commission looked to assess the likelihood that facilities will be built.<sup>10</sup> That is precisely the case here and the Commission should reach the same result.

RWA now accepts the applicability of the cases that T-Mobile cited to support the Waiver Request, and argues more or less that the Commission's primary concern was with how deserving the parties demonstrated themselves to be, rather than how the public interest would be served taking into account all of the factors the Commission considered in each instance.<sup>11</sup> RWA reaches exactly the wrong conclusions about the *Northstar* and *Pacific Communications* cases; they are about the Communications Act's overriding goal of providing more and better service to the public, particularly in rural areas, as quickly as possible.

RWA first misrepresents the Commission's holding in *Northstar* by suggesting that the decision turned on there being no other competitive options in the licensed areas;<sup>12</sup> to the contrary, the *Northstar* decision stated clearly that “even to the extent that some commercial wireless carriers are serving parts of these BTAs, Northstar's proposed service to rural areas will benefit

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<sup>8</sup> RWA *ex parte* Letter at 2.

<sup>9</sup> RWA *ex parte* Letter at 2 and n.5. Ironically, RWA contrasts the *potential* of T-Mobile providing service with its incorrect assumptions about how its un-named members will put the spectrum promptly to use. See *id* at 3; RWA Comments at 4-5. The truth is the exact opposite of what RWA portrays. It is T-Mobile that will ensure that service will be provided quickly to the public.

<sup>10</sup> *Pacific Commc'ns LLC and Coral Wireless, LLC*, Memorandum Opinion and Order, 19 FCC Rcd. 15574, ¶ 11 (WTB 2004) (“*Pacific Communications*”) (noting that the assignee Coral had taken reasonable steps toward constructing its system, such as “determining the technology and equipment to be employed in the system, identifying transmitted sites, and performing market surveys and research.”).

<sup>11</sup> RWA *ex parte* Letter at 3.

<sup>12</sup> RWA *ex parte* Letter at 3.

consumers in terms of choices available to them and will likely promote vigorous competition in the marketplace.”<sup>13</sup> The essential fact in *Northstar* was that grant of the waiver would bring a competitive choice for wireless service to sparsely populated rural areas. That reasoning supports grant of the waiver in this case.

Likewise, RWA argues that the reason the Commission granted a waiver in *Pacific Communications* was because the delay in obtaining the licenses was beyond the transferee’s control.<sup>14</sup> While the Commission did find that the litigation delaying the transfer was beyond the parties’ control, the essential reason why it granted the waiver was to allow the licenses to be put to “more competitive and efficient use.”<sup>15</sup> Again, that reasoning supports grant of the waiver in this case.

*T-Mobile Offers Strengthened Performance Commitments.* On October 6, T-Mobile confirmed the performance commitments made in the Waiver. In order to provide an even more comprehensive set of commitments to ensure that it remains committed to providing service, T-Mobile offers the following updated set of commitments to deploy the affected spectrum quickly to serve the public, including numerous additional milestones to ensure that rapid progress is made and penalties if it fails to do so.

#### **For the A Block Licenses (WQJQ805 and WQJQ806)**

- *Four Month Report* – Four months from the time the Commission grants both the Assignment Application and the Waiver Requests (the “FCC Grant Date”), T-Mobile will provide a certification describing the steps it has taken to fulfill the performance requirements specified below and that it expects to be able to meet those commitments.
- *Seven Month Report*<sup>16</sup> – Seven months from the FCC Grant Date, T-Mobile will provide a certification describing the specific actions the company has taken (*e.g.*, execution of site leases, arrangements for fiber or other backhaul capacity, etc.) to ensure that it will be able to fulfill the performance requirements specified below and that, based on actions and agreements, it expects to be able to meet those commitments. Upon request by the Commission, the company will provide documents that demonstrate the actions it has taken.
- *Interim Construction* – Thirteen (13) months from the FCC Grant Date, T-Mobile will deploy facilities sufficient to cover forty percent (40%) of the geographic area, consistent with, among others, rule Section 27.14(g) covered by the licenses. If T-Mobile fails to satisfy this requirement, the Commission may take action to cancel those portions of the licensed areas where T-Mobile was not providing service by June 13, 2017 *unless* T-

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<sup>13</sup> *Northstar Technology, LLC*, 17 FCC Rcd. 10908, 10909-10, ¶ 4 (WTB 2002).

<sup>14</sup> RWA *ex parte* Letter at 3.

<sup>15</sup> *Pacific Communications* at ¶ 6.

<sup>16</sup> T-Mobile has modestly adjusted several of the commitments to account for finalization of the license transfers. Those commitments remain consistent with those supported by the entities noted above.

Mobile demonstrates (1) that it has made good faith efforts to meet the 40% benchmark, but was unable to do so due to circumstances beyond its control; and (2) it affirms that it remains on track to meet the 70% coverage benchmark by January 13, 2019. T-Mobile may demonstrate that it has made good faith efforts to meet the 40% benchmark by, among other things, providing copies of agreements for tower access, backhaul, equipment and other system components, executed reasonably in advance of the benchmark deadline. As long as T-Mobile provides a demonstration that it has made good faith efforts to meet the 40% benchmark, the licenses will remain valid.

- *Final Construction* – By twenty five (25) months from the FCC Grant Date, T-Mobile will meet the performance obligations of the Final Construction Deadline (coverage to 70% of the geographic area covered by the licenses) consistent with, among others, rule Section 27.14(g). If T-Mobile fails to satisfy this requirement, the Commission may take action to cancel those portions of the licensed geographic area where T-Mobile was not providing service by June 13, 2017 *unless* T-Mobile is providing service to 60% of the licensed geographic area. In that case, T-Mobile can retain authorization to provide service to those areas it is covering and it will lose authorization for the remainder of the licensed area.
- *Continuation of Coverage* – Once T-Mobile satisfies the Final Construction requirements specified above, it shall maintain the demonstrated 70% coverage for a period of five years, *except* that (1) service may be reduced in the normal course to no less than 60% for any consecutive six month period as T-Mobile adjusts coverage to meet consumer demands or for other usual commercial reasons; and (2) service may be reduced to less than 60% for a period of up to six consecutive months to accommodate any unusual circumstances such as a system upgrade or recovery from a natural or man-made catastrophic event.

#### **For the B Block License (WQJQ807)**

- *Construction Requirements* – T-Mobile will meet the Interim Construction requirement (35% of the licensed area) by four months from the FCC Grant Date and provide a demonstration that it has met the Interim Requirement. T-Mobile will meet the Final Construction requirement by June 13, 2019.

#### **Additional Commitments**

- *Retail Sites* – T-Mobile will establish retail sites, as described in its Waiver Request, by the end of 2018 in the areas covered by the licenses for stations WQJQ805 and WQJQ806.
- *Tribal Lands* – By the Final Construction Deadline, T-Mobile will demonstrate that it has made good faith efforts to provide service to the Ft. Peck Reservation including working with Tribal leaders to identify and secure locations for tower construction or access and backhaul capabilities and to reach agreements facilitating use of those locations.

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The public interest determination here is not a close call. The public's interest in rapid, widespread availability of competitive wireless service, particularly in the rural and tribal areas of Montana and Wyoming covered by the Licenses, should be the most relevant consideration for the Commission. That interest is best served by grant of the requested waiver.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey  
Vice President, Government Affairs  
Technology and Engineering Policy